

1 UNITED STATES DISTRICT COURT FOR THE
2 DISTRICT OF NEVADA

3 WP 6 RESTAURANT MANAGEMENT
4 GROUP, LLC,

5 Plaintiff,
6 v.

7 ZURICH AMERICAN INSURANCE
8 COMPANY,

9 Defendant.

Case No. 2:20-cv-01506-KJD-NJK

**JOINT STIPULATED CONFIDENTIALITY
AND PROTECTIVE ORDER**

10 IT IS HEREBY STIPULATED AND AGREED, by and among, Plaintiff, WP 6
11 RESTAURANT MANAGEMENT GROUP, LLC, and Defendant, Zurich American Insurance
12 Company (collectively, the “Parties”), through their respective undersigned counsel, that the
13 following terms and conditions of this Stipulated Confidentiality and Protective Order (the “Order”)
14 shall govern the handling of documents, things, depositions and deposition exhibits, written
15 discovery responses, testimony, portion(s) of any of these things, and any other information
16 produced, given, or exchanged between any party to this case and any other party or non-parties in
17 the above-referenced action (collectively, the “Material”). The Parties agree to avoid waiver of
18 privilege or work product protections through the maximum protections afforded by Federal Rule
19 of Evidence 502(d).

Confidential Material

20 1. Any party required to produce documents or information, or to provide testimony
21 pursuant to a subpoena or Court Order, may designate as “Confidential” and subject to this Order
22 any Material: (a) containing or reflecting trade secrets or proprietary, commercial, financial,
23 technical, competitively sensitive, or other confidential business information or data; (b) containing
24 personal/private information; (c) containing information received in confidence; or (d) which the
25 producing party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G)
26 of the Federal Rules of Civil Procedure (collectively, the “Confidential Material”).

27 2. Confidential Material may be used only for purposes of this litigation and shall not
28 be used for any other purpose. Confidential Material shall not be disclosed to anyone other than

1 those listed in Paragraph 3 of this Order, unless the receiving party obtains prior written agreement
2 from the producing party or this Court orders otherwise.

3 3. Other than as set forth in paragraph 2 above, Confidential Material may only be
4 disclosed to the following individuals under the following conditions:

- 5 a. The parties to this litigation and their counsel of record, outside counsel, and
6 in-house counsel;
- 7 b. The parents, affiliates, officers, directors, employees, or agents of the Parties
8 who have a need to know or see the Confidential Material for purposes of this
9 action;
- 10 c. The retained experts or consultants of the Parties to this litigation, provided
11 that prior to disclosure, the expert or consultant must execute the attached
12 “Agreement to be Bound by Stipulated Confidentiality and Protective
13 Order”;
- 14 d. This Court and this Court’s personnel;
- 15 e. Any mediator or arbitrator engaged by the Parties to this litigation;
- 16 f. Any deponent or witness in this litigation;
- 17 g. The vendors retained by the parties to this litigation, to assist in preparing or
18 cataloging discovery, for trial, and/or for hearings including, without
19 limitation, court reporters, litigation support personnel, jury consultants, data
20 retrieval and storage vendors, demonstrative and audiovisual aid companies,
21 and stenographers;
- 22 h. The secretarial, paralegal, clerical, duplicating, and data processing personnel
23 of the foregoing;
- 24 i. The author or recipient of a document containing the Confidential Material
25 or a custodian or other person who otherwise possessed or knew the
26 information;

- 1 j. To the extent contractually obligated, any insurer or reinsurer, and the parties’
2 outside or in-house auditors as necessary in fulfilling their responsibilities in
3 respect to this matter;
4 k. Regulatory authorities if required by such regulatory body; and
5 l. Other persons only after notice to all parties and upon order of the Court, or
6 upon written consent of the Parties.

7 4. Each page of any document subject to this Order shall be stamped or otherwise
8 affixed with the legend “CONFIDENTIAL” in a manner that does not interfere with the legibility
9 of the document to indicate that it is subject to this Order. Any confidential designation which is
10 inadvertently omitted subsequent to the Court’s Order may be corrected by written notification to
11 opposing counsel.

12 5. Nothing contained in this Order shall be construed to restrict the use or disclosure of
13 Confidential Material at trial, as exhibits during depositions, or in connection with motions filed
14 with the Court. Further, nothing herein shall be construed to limit any party’s ability to object to
15 the admissibility of Confidential Material at trial. The foregoing provision shall not apply to any
16 documents that have already otherwise become publicly available.

17 6. If either party seeks to file any of the Confidential Material with the Court, they shall
18 seek to file such documents under seal pursuant to the Local Rules of this Court.

19 7. If counsel for a party receiving Confidential Material objects to that designation in
20 whole or in part, counsel shall serve on the designating party a written objection describing with
21 particularity the grounds for objection within twenty-one (21) days of receipt of the material
22 designated Confidential Material. Counsel for the designating party shall respond to the objection
23 in writing within twenty-one (21) days, and state with particularity the grounds in support of the
24 designation and how/why it is appropriate for the information at hand. If the designating party does
25 not timely respond to the objection, the objection stands and the challenged designation is deemed
26 void. If a timely written response is made to the objection, counsel shall confer in good faith within
27 ten (10) days by phone in an effort to resolve the dispute. If the dispute cannot be resolved, the
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1 proponent of the challenged designation shall present the dispute to this Court. The parties may, by
2 written agreement, enlarge the deadlines set forth in this paragraph.

3 8. To the extent consistent with applicable law, the inadvertent disclosure of
4 Confidential Material that should have been designated as such shall not be deemed to waive a
5 party's claim of confidentiality, in whole or in part, as to the material disclosed. Inadvertent
6 disclosures may be rectified by written notification given at any time after disclosure to all parties
7 receiving it, and such notice shall constitute a designation of the material as Confidential Material
8 under this Order.

9 9. If any party or counsel learns, by inadvertence or otherwise, that Confidential
10 Materials have been disclosed to anyone under any circumstance not authorized by this Order, that
11 person must immediately: (1) notify the designating party by phone and email; (2) use its best efforts
12 to retrieve all unauthorized copies of the Confidential Material; (3) inform the person to whom the
13 unauthorized disclosures were made of all of the terms of this Order; and (4) request that such person
14 abide by the conditions of this Order.

15 10. The following information shall not be considered Confidential Material under this
16 Order: (a) information in the public domain; (b) information that becomes part of the public domain
17 after its disclosure to a party as a result of a publication not involving a violation of this Order; (c)
18 information already known to a party through proper means prior to disclosure; and (d) information
19 that is or becomes available to a party from a source other than the party asserting confidentiality
20 that obtained the information lawfully and under no obligation of confidentiality.

21 **Non-Waiver Pursuant to Federal Rule of Evidence 502(d)**

22 11. The production of documents, electronically stored information ("ESI") or other
23 Material subject to the attorney-client privilege, work product doctrine or any other privilege or
24 immunity ("Privileged Information"), whether inadvertent or otherwise, does not constitute a waiver
25 of any applicable privilege or protection from discovery in this action or in any other federal or state
26 proceeding.

27 a. If a receiving party discovers that it is in receipt of a document or ESI that it
28 reasonably believes might contain Privileged Information, it shall notify the

1 producing party, and identify the document in question, within ten (10)
2 business days of such discovery.

3 b. Upon discovery by a producing party (whether by notice from the receiving
4 party, or otherwise) that it did or may have produced Privileged Information,
5 the producing party shall, within ten (10) business days of such discovery,
6 request the return of such Privileged Information by sending a written
7 notification (“Clawback Letter”) to the receiving party. The Clawback Letter
8 shall (i) identify the documents or ESI in question by Bates number or
9 otherwise; (ii) identify the basis on which the privileged information should
10 have been withheld from production; and (iii) provide a privilege log entry
11 for each identified document or a cross reference to an existing privilege log
12 entry for such documents. The requirements in this paragraph apply equally
13 to instances in which a producing party discovers during a deposition that it
14 did or may have produced Privileged Information. For purposes of this
15 protocol, “discovery” shall mean “actual notice;” production of Privileged
16 Information alone is insufficient to constitute actual notice.

17 c. Upon receipt of a Clawback Letter, the receiving party shall promptly destroy
18 or delete all documents or ESI containing Privileged Information identified
19 in the letter, and all reproductions or summaries thereof regardless of whether
20 the receiving party plans to challenge the claim of privilege. The receiving
21 party shall follow these procedures regardless of whether a document is
22 comprised fully or partially of Privileged Information. The producing party
23 shall, within twenty (20) business days of the date of the Clawback Letter,
24 reproduce any document or ESI that is comprised only partially of Privileged
25 Information with the Privileged Information redacted.

26 d. If a receiving party disagrees with a claim of privilege set forth in a Clawback
27 Letter, it shall notify the producing party and provide the basis for disputing
28 the privilege claim in writing. The producing party must preserve the

1 information claimed to be privileged or otherwise protected until the claim is
2 resolved. Thereafter, the parties shall meet and confer in a good faith attempt
3 to resolve the dispute.

4 e. In the event that the parties do not resolve their dispute, the receiving party
5 may bring a motion for a determination of whether a privilege applies. If
6 such a motion is made, the producing party shall submit to the Court, under
7 seal and for in camera review, a copy of the disputed Privileged Information
8 in connection with its motion papers. This in camera submission to the Court
9 shall not constitute a waiver of any privilege or protection. Any motion to
10 determine whether a privilege applies shall be filed no later than thirty (30)
11 days after the parties meet and confer. All documents and ESI identified in
12 any Clawback Letter shall be included in the privilege logs produced by the
13 parties. The obligations of the parties set forth in this section apply
14 irrespective of the care taken by the producing party to prevent inadvertent
15 disclosure.

16 f. Except as expressly set forth herein, nothing in this section, or elsewhere in
17 this stipulation, shall limit the bases on which a receiving party may challenge
18 the assertion of any privilege or protection by the producing party.
19 Notwithstanding anything to the contrary herein, a receiving party may not
20 cite or refer to the contents of a clawed back document to argue it is not
21 privileged.

22 g. Nothing herein shall prevent the receiving party from challenging the
23 propriety of the attorney-client privilege or work product privilege or other
24 applicable privilege or immunity designation by submitting a written
25 challenge to the Court, but such a challenge does not relieve a receiving party
26 of its obligation to return or delete materials pursuant to sub-part (c) above,
27 and the receiving party shall not assert as a basis for the challenge the fact or
28 circumstances of the prior production of those materials. If the receiving party

1 submits such a challenge to the Court, the producing party must promptly
2 present the material to the Court under seal for a determination of the claim.

3 h. The receiving party shall not use or disclose a document, its contents, or
4 information for which a claim of privilege or immunity is made pursuant to
5 this Paragraph for any purpose until the matter is resolved by agreement of
6 the parties or by the Court.

7 i. In addition to any other obligation to preserve documents, the producing party
8 must preserve any documents recalled under this Paragraph for the duration
9 of this litigation.

10 **Other Matters:**

11 12. This Order does not deprive any party of its right to object to discovery by any other
12 party or on any otherwise permitted ground. This Order is entered without prejudice to the right of
13 any party to move the court for modification of or relief from any of its terms.

14 13. Any person or party subject to this Order who in another proceeding becomes subject
15 to a motion to disclose another party's information designated Confidential pursuant to this Order
16 shall promptly notify that party of the motion so that party may have an opportunity to appear and
17 be heard in the other proceeding. Such notice must be in writing and shall include a copy of the
18 motion.

19 14. Upon final settlement or other conclusion of this litigation, including any appeal,
20 every party subject to this Order must either return all original Confidential Material to the
21 originating source, maintain and keep as Confidential, or destroy all Confidential Material subject
22 to this Order.

23 15. This Order shall survive the final termination of the case and remains in full force
24 and effect unless modified by court order or by written stipulation of the parties.

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26 It is SO ORDERED

27 Dated: May 3, 2021

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United States Magistrate Judge

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EXHIBIT A
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEVADA

WP 6 RESTAURANT MANAGEMENT
GROUP, LLC,

Plaintiff,
v.

ZURICH AMERICAN INSURANCE
COMPANY,

Defendant.

Case No. 2:20-cv-01506-KJD-NJK

**JOINT STIPULATED CONFIDENTIALITY
AND PROTECTIVE ORDER**

**AGREEMENT TO BE BOUND BY STIPULATED CONFIDENTIALITY AND
PROTECTIVE ORDER**

The undersigned hereby acknowledges that he/she has read the Stipulated Confidentiality and Protective Order in the above-captioned action and attached to this Order, understands its terms, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Nevada for the purpose of proceedings relating to my performance under, compliance with or violation of the Confidentiality and Protective Order.

The undersigned understands that the terms of the Stipulated Confidentiality and Protective Order obligate him/her to use materials designated as “CONFIDENTIAL” or substantially equivalent language, in accordance with the Stipulated Confidentiality and Protective Order solely for purposes of the above-captioned action. The undersigned shall not disclose any information contained in materials designated as “CONFIDENTIAL” to any other person or entity.

The undersigned agrees that at the conclusion of the litigation, he/she will return all confidential information to the party or attorney from whom he/she received it.

The undersigned understands that disclosure of information designated “CONFIDENTIAL” in violation of the Confidentiality and Protective Order may constitute contempt of court.

1 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true
2 and correct.

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4 Date: _____

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6 Printed Name: _____

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8 Signature: _____

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